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No. 94-790

In the Supreme Court of the United States

OCTOBER TERM, 1994

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES, ET AL., PETITIONERS

v.

ZIYA K. KORAY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES

DREW S. DAYS, III
Solicitor General

JO ANN HARRIS
Assistant Attorney General

MICHAEL R. DREEBEN
Deputy Solicitor General

MIGUEL A. ESTRADA
Assistant to the Solicitor General

JOSEPH DOUGLAS WILSON
Attorney

Department of Justice
Washington, D.C. 20530
(202) 514-2217

BEST AVAILABLE COPY

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QUESTION PRESENTED

Section 3585 of 18 U.S.C. provides that a defendant generally must "be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences." The question presented is whether a federal prisoner must receive credit on his sentence under Section 3585 for time when he was released on bail pursuant to the Bail Reform Act of 1984.

PARTIES TO THE PROCEEDINGS

In addition to the parties named in the caption, the following are petitioners in this Court: United States Bureau of Prisons and Frank Sizer, warden, Allenwood Federal Prison Camp, Allenwood, Pennsylvania.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-24a) is reported at 21 F.3d 558.

JURISDICTION

The judgment of the court of appeals was entered on April 25, 1994. A petition for rehearing was denied on June 17, 1994. Pet. App. 29a-30a. On September 8, 1994, Justice Souter extended the time within which to file a petition for a writ of certiorari

to and including October 15, 1994. *Id.* at 31a. On October 11, 1994, Justice Souter further extended the time within which to file a petition for a writ of certiorari to and including November 1, 1994. *Id.* at 32a. The petition for a writ of certiorari was filed on November 1, 1994, and was granted on January 13, 1995. J.A. 37. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

STATUTORY PROVISION INVOLVED

Section 3585 of Title 18 provides:

> **Calculation of a term of imprisonment**
>
> (a) **Commencement of sentence.**—A sentence to a term of imprisonment commences on the date the defendant is received in custody awaiting transportation to, or arrives voluntarily to commence service of sentence at, the official detention facility at which the sentence is to be served.
>
> (b) **Credit for prior custody.** A defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences—
>
> > (1) as a result of the offense for which the sentence was imposed; or
> >
> > (2) as a result of any other charge for which the defendant was arrested after the commission of the offense for which the sentence was imposed;
>
> that has not been credited against another sentence.

STATEMENT

1. On April 23, 1991, respondent was arrested for laundering monetary instruments, in violation of 18 U.S.C. 1956(a)(1). On June 18, 1991, he entered a guilty plea to that offense in the United States District Court for the District of Maryland. On June 25, 1991, a federal magistrate judge ordered respondent released on bail pending sentencing on condition that respondent reside at a Volunteers of America community treatment center. On October 21, 1991, the district court sentenced respondent to 41 months' imprisonment. Respondent remained at the Volunteers of America facility until November 25, 1991, the date on which he was ordered to surrender for service of his sentence. Respondent then reported to Allenwood Federal Prison Camp in Pennsylvania. Pet. App. 2a.

Invoking Bureau of Prisons (BOP or Bureau) administrative procedures, respondent sought credit against his sentence for the 150 days that he spent at the community treatment center between June 25 and November 25, 1991. Relying on its established policy, BOP declined to grant the requested credit. After exhausting his administrative remedies, respondent filed a petition for habeas corpus in the United States District Court for the Middle District of Pennsylvania seeking credit for the time he spent in the community treatment center. The district court denied the petition, finding that respondent's stay at the community treatment center did not constitute "official detention" within the meaning of 18 U.S.C. 3585(b), which governs credit for time spent in detention before the commencement of a sentence. Pet. App. 25a-28a.

2. The court of appeals reversed. Pet. App. 1a-24a. The court acknowledged that, with the exception of the Ninth Circuit, "most [courts of appeals] have concluded that section 3585 * * * does not require the Bureau to credit presentenced defendants whose bail conditions allowed them to be confined outside of Bureau of Prison[s] facilities." *Id.* at 7a. The court declined, however, to defer to BOP's view that the phrase "official detention" in Section 3585(b) does not include restrictive conditions of bail. The court explained that the statutory language need not be read "as if it provided 'official detention *by the Attorney General or the Bureau of Prisons*,' " since "there is nothing in the statute which requires or suggests that a defendant must be under the detention of the Bureau" and "[a] court may 'detain' a person as 'official[ly]' as the Attorney General." Pet. App. 13a-14a.

The court also found that the Bureau's interpretation of the statute was not worthy of deference because it appears in a "Program Statement" rather than in "published regulations subject to the rigors of the Administrative Procedure[] Act, including public notice and comment." Pet. App. 9a. Finally, the court placed considerable weight on its belief that BOP followed a "functional" approach to the credit issue under the predecessor statute, 18 U.S.C. 3568 (repealed). According to the court, that functional analysis focused on the restrictiveness of the bail conditions placed on a defendant, and, if utilized here, might have allowed respondent to obtain credit for his stay at the community treatment center. Pet. App. 9a-13a.

The court concluded that " 'official detention' for purposes of credit under 18 U.S.C. § 3585 includes

time spent under conditions of jail-type confinement." Pet. App. 23a. Although the court did not define that concept with precision, it believed that its approach would not be difficult to administer, because "only a small percentage of federal defendants are released to a halfway house," and because the Bureau had experience with the different but related functional approach to Section 3585(b) adopted by the Ninth Circuit. Pet. App. 21a-22a. The court remanded the case to the district court to determine whether respondent was in "jail-type" confinement during the time that he was at the community treatment center. *Id.* at 24a. Subsequently, respondent was released pending further proceedings in the court of appeals and the district court. *Id.* at 51a.

INTRODUCTION AND SUMMARY OF ARGUMENT

Section 3585 of Title 18, entitled "[c]alculation of a term of imprisonment," is the federal statute that governs when a federal sentence of imprisonment is deemed to begin, and whether credit toward the sentence must be awarded for any time the prisoner spent in "official detention" before the sentence began. The Bureau of Prisons is the agency charged with administering that statute. See *United States* v. *Wilson*, 112 S. Ct. 1351 (1992). The question in this case is whether Section 3585 of Title 18 requires the Bureau of Prisons to grant credit toward a sentence of imprisonment for time during which a defendant was released on bail, but was required to reside at a community treatment center as a condition of bail.

Most courts of appeals have agreed with the Bureau's view that restrictive conditions of bail do not amount to "official detention" within the meaning of

Section 3585(b).[1] In *Mills* v. *Taylor*, 967 F.2d 1397 (1992), the Ninth Circuit departed from that approach and concluded that "official detention" includes any conditions that "approach * * * incarceration." *Id.* at 1400. In this case, the Third Circuit, while stating that it will "not go as far as does the Ninth Circuit," concluded that the Bureau is required to grant credit to a defendant whose release on bail was attended by conditions amounting to "jail-type confinement." Pet. App. 23a. In our view, the Third Circuit erred in rejecting the Bureau's interpretation. The Bureau's approach is supported by the text of Section 3585(b) and related sentencing provisions, the history of Section 3585(b), and principles of administrative deference.

A. Section 3585(b) does not define the phrase "official detention," but related statutory provisions indicate that Congress used that phrase to refer only to incarceration in a penal or correctional facility, where a defendant is under the control of federal or

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[1] See *Moreland* v. *United States*, 968 F.2d 655 (8th Cir.) (en banc) (time spent in halfway house not creditable), cert. denied, 113 S. Ct. 675 (1992); *United States* v. *Edwards*, 960 F.2d 278, 282-283 (2d Cir. 1992) (home confinement not creditable); *Pinedo* v. *United States*, 955 F.2d 12, 14 (5th Cir. 1992) (per curiam); *United States* v. *Becak*, 954 F.2d 386, 387-388 (6th Cir.) ("physical incarceration [required] to receive credit for presentence detention"), cert. denied, 112 S. Ct. 2286 (1992); *United States* v. *Zackular*, 945 F.2d 423, 425 & n.2 (1st Cir. 1991) (home confinement not creditable); *United States* v. *Insley*, 927 F.2d 185, 186 (4th Cir. 1991) (no credit for home confinement, because only "full physical incarceration" satisfies statutory requirement); *United States* v. *Woods*, 888 F.2d 653, 655-656 (10th Cir. 1989) (halfway house confinement not creditable), cert. denied, 494 U.S. 1006 (1990).

state correctional authorities. The phrase does not include halfway house "confinement" during which the defendant is not subject to summary removal and reassignment to a more secure environment at the discretion of correctional authorities.

First, the Bail Reform Act of 1984 is the statute that authorizes pre-sentence restraints on liberty, and under that statute "detention" means "confinement in a corrections facility." 18 U.S.C. 3142(i)(2). The bail statute is especially significant because it was enacted in the same statute as the Sentencing Reform Act of 1984, of which Section 3585 was a part. Second, Congress's use of the phrase "official detention facility" in Section 3585(a) to refer to the place where the defendant will serve his sentence confirms the Bureau's interpretation, because related statutes make clear that a sentence of imprisonment may be served only in a "penal or correctional facility" where the prisoner is subject to the control of federal or state correctional authorities. 18 U.S.C. 3621(b).

Other statutes also make clear that Congress did not consider the limitations on respondent's freedom of movement as a condition of bail to constitute "official detention." When Congress used the term "official detention facility" in federal sentencing statutes, such as 18 U.S.C. 3623, it contemplated facilities that are under the supervision of prison authorities. Moreover, the court of appeals' rule undermines one of the principal goals of the Sentencing Reform Act—the reduction of unwarranted sentencing disparities. To calculate credit under the court of appeals' amorphous standard, hundreds of different district judges across the country will be asked to review the Bureau's determinations in light of the restrictiveness of particular bail bonds. That process will inevitably produce conflicting results.

B. The legislative history of Section 3585 also supports the view that prisoners who are "released" on bail are not entitled to pre-sentence credit. The statute that preceded Section 3585 was enacted as part of a significant revision of bail practices, and it was based on congressional concern that prisoners who could not obtain release on bail should at least receive credit for the time spent in the custody of the Attorney General. By the time Congress enacted Section 3585 in 1984 (when it again revised bail practices), the courts of appeals had uniformly held that prisoners released on bail were not entitled to credit under the predecessor statute. There is no indication that Congress intended to change that rule, and, as this Court previously stated in construing Section 3585(b), "[i]t is not lightly to be assumed that Congress intended to depart from a long established policy" followed under the predecessor provision. *United States* v. *Wilson*, 112 S. Ct. at 1355.

C. Finally, the court of appeals erred in refusing to defer to the Bureau of Prisons' interpretation of a statute the Bureau is charged with administering. The court of appeals incorrectly believed that the Bureau has followed inconsistent approaches to the credit issue, and that the Bureau's views are too informal to warrant deference. Because the Bureau's considered interpretation of Section 3585(b) is reasonable, the court of appeals was required to defer to it, even if the language of that statute would bear a different reading. See *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-844 (1984).

ARGUMENT

SECTION 3585 DOES NOT REQUIRE THE BUREAU OF PRISONS TO AWARD A PRISONER CREDIT FOR TIME WHEN HE WAS RELEASED ON BAIL PURSUANT TO THE BAIL REFORM ACT OF 1984

A. The Text Of Section 3585 And The Surrounding Statutory Framework Demonstrate That Credit May Not Be Granted For Time Spent In A Community Treatment Center As A Condition Of Bail

Section 3585(b) states that a defendant "shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention" before beginning service of his sentence. Section 3585(b) does not define the phrase "official detention." That phrase, however, derives a particular meaning from related statutory provisions that authorize presentence restraints on a defendant's liberty. The provisions governing "detention" by the Attorney General, see 18 U.S.C. 3142, 3143 (1988 & Supp. V 1993), and the detailed statutory framework governing "post-sentence administration" found in Chapter 229 of Title 18, see 18 U.S.C. 3586, establish that the "official detention" contemplated by Section 3585(b) is incarceration in a facility under the control of correctional authorities.

1. The Bail Reform Act of 1984, 18 U.S.C. 3141 *et seq.*, is the body of law that authorizes restraints on a defendant's liberty, both before trial, see 18 U.S.C. 3142(a), and while the defendant "is awaiting imposition or execution of sentence." 18 U.S.C. 3143(a) (Supp. V 1993). That Act therefore provides a natural complement to Section 3585(b)'s provision of credit for time spent in "official detention" before the sentence commenced.

The Act provides a court with two choices: to release a defendant on bail or to order him detained. A defendant who is admitted to bail is "released," even when his bail includes specific conditions limiting his freedom of movement, such as residence in a community treatment center. See 18 U.S.C. 3142(c)(1)(B)(x). A defendant is "detained" only when he is denied bail—a ruling that results in his being "committed to the custody of the Attorney General for confinement in a corrections facility" pending trial and sentence. 18 U.S.C. 3142(i)(2). Thus, the only "detention" that a defendant may suffer "official[ly]" by virtue of a federal court order is detention of the type contemplated by the Bail Reform Act of 1984—*i.e.*, "confinement in a corrections facility."

The common origin of Section 3585(b) and of the statutory provisions governing bail provides further evidence that Section 3585(b) should be construed in light of the bail provisions. Congress enacted both the bail provisions and Section 3585(b) as part of the same statute, the Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, Tit. II, 98 Stat. 1976.[2] That legislation worked a broad and far-reaching reform of bail and sentencing practices. As this Court recognized in resolving another controversy that resulted from the same reforms, Congress must have been aware of the definitions it gave to statutory

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[2] The provisions of the Comprehensive Crime Control Act of 1984 relating to bail are known as the Bail Reform Act of 1984. Pub. L. No. 98-473, Tit. II, ch. I, 98 Stat. 1976. The provisions of the Act relating to sentencing, including the credit provision at issue here, are known as the Sentencing Reform Act of 1984. Pub. L. No. 98-473, Tit. II, ch. II, 98 Stat. 1987.

terms in the "related legislative enactments" and must have "legislated with reference to [them]." *Gozlon-Peretz* v. *United States*, 498 U.S. 395, 407-408 (1991). That close relationship among the bail and credit provisions therefore "leads to the conclusion that 'official detention' means incarceration." *United States* v. *Becak*, 954 F.2d 386, 388 (6th Cir.), cert. denied, 112 S. Ct. 2286 (1992); accord *Moreland* v. *United States*, 968 F.2d 655, 662 (8th Cir.) (Loken, J., concurring), cert. denied, 113 S. Ct. 675 (1992).

Respondent contends (Br. in Opp. 14) that the bail statute's understanding of "detention" should not inform the interpretation given to Section 3585(b), because in certain circumstances the Bureau grants credit for time spent in state custody—when the prisoner is not in the custody "of the Attorney General" as contemplated by the Bail Reform Act of 1984. That would occur, for example, when a defendant is originally arrested and held without bail on state-law charges that ultimately are dismissed, but when the conduct underlying those charges then forms the basis for a federal conviction and sentence of imprisonment.[3] That observation, however, does not undercut our essential point: that the logical inference from the language of the Bail Reform Act of 1984 is that Congress understood the term "detention" to mean penal safekeeping by correctional offi-

[3] Because Section 3585(b) expressly prohibits credit for time "that has * * * been credited against another sentence," an award of credit for time spent in state custody is rare. Thus, for example, if the state proceedings resulted in conviction and a jail sentence, time spent in state custody would not be creditable toward a federal sentence, unless state authorities did not credit the defendant's pre-trial incarceration toward the state sentence.

cials, not private supervision, however restrictive, of conditions of release.

2. The Bureau of Prisons' view that a defendant may receive credit under Section 3585(b) only for a period of custody spent under the control of federal or state correctional authorities is also confirmed by other provisions of Title 18 that govern the implementation of federal sentences.[4]

Section 3585(a), which governs when a federal sentence is deemed to "commence," is especially significant. That Section provides that a federal sentence commences when the defendant is received for transportation to or arrives at "the official detention facility at which the sentence is to be served." Section 3621(b) of Title 18 in turn provides that a federal sentence of imprisonment may be served at "any available penal or correctional facility" that is "designate[d]" by the Bureau of Prisons, "whether maintained by the Federal Government or otherwise." The phrase "official detention facility" in Section 3585(a) therefore refers to a correctional facility designated by the Bureau for the service of federal sentences, and where the prisoner remains at the discretion of correctional authorities who "may * * * direct [his] transfer * * * from one penal or correctional facility to another." 18 U.S.C. 3621(b).[5]

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[4] Section 3586 of Title 18 provides that "[t]he implementation of a sentence of imprisonment is governed by the provisions of subchapter C of chapter 229." Subchapter C governs where a sentence of imprisonment may be served, the circumstances under which a prisoner serving a sentence may engage in paid employment while continuing in "official detention," the date of the prisoner's release, and other matters. See 18 U.S.C. 3621 *et seq.*

[5] That the phrase "official detention" means incarceration is also confirmed by the history of Section 3585(a). The

That interpretation of Section 3585(a) is confirmed by other provisions governing the administration of federal sentences. For example, Sections 3622(b) and 3622(c) of Title 18 provide that a prisoner serving a federal sentence of imprisonment may participate in training or employment "while continuing in official detention at the penal or correctional facility." Section 3623 provides that a prisoner serving a federal sentence may be transferred to "an official detention facility" operated by a State when the prisoner faces further charges in that State and the State requests the transfer. Because basic canons of construction suggest that the words "official detention" should bear the same meaning in subsections (a) and (b) of Section 3585 and in the related sentencing statutes, see *Estate of Cowart* v. *Nicklos Drilling Co.*, 112 S. Ct. 2589, 2596 (1992); see also *Reves* v. *Ernst & Young*, 113 S. Ct. 1163, 1169 (1993), credit for time "spent in official detention" under Section 3585(b) is available only to a defendant who was detained in a "penal or correctional facility," 18 U.S.C. 3621(b), and was subject to the control of state or federal penal authorities.

Moreover, when restrictions on liberty such as those placed on respondent are made part of a federal sentence, they are not considered part of a sentence of *imprisonment*. Congress has provided that such community confinement may be ordered when the defendant is sentenced to *probation*, a type of sentence that differs "fundamentally," *United States* v. *Grand-*

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phrase "official detention facility" replaced references in a predecessor statute to "penitentiary, reformatory, or jail" and to "a jail or other place of detention." See 18 U.S.C. 3568 (1982) (repealed). There is no indication that Congress intended a substantive change when it replaced those two phrases with a single descriptive phrase.

erson, 114 S. Ct. 1259, 1264 (1994), from imprisonment and is reserved for less grave offenses. See 18 U.S.C. 3563(b)(10), (12), (14) & (20); see also *United States* v. *Granderson*, 114 S. Ct. at 1266 (sentence of probation "ordinarily reflects the judgment that the offense and offender's criminal history were not so serious as to warrant imprisonment"); Sentencing Guidelines §§ 5F1.1 & 5F1.2.[6] There is therefore every indication that Congress did not conceive of the type of restraints on liberty placed on respondent as "imprisonment," but that it instead regarded those restraints as equivalent to more lenient probationary sentences. It would be anomalous to interpret a statute designed, as its title indicates, to govern the "[c]alculation of a term of imprisonment" to require credit for restrictions on liberty that are not "imprisonment" as that term is used in federal sentencing statutes.

3. The rule adopted by the court of appeals is also inconsistent with the more general goals of the Sentencing Reform Act, of which Section 3585(b) is a part. In enacting the Sentencing Reform Act, Congress was concerned primarily with the "great variation among sentences imposed by different judges upon similarly situated offenders." *Mistretta* v. *United States*, 488 U.S. 361, 366 (1989). Congress

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[6] Congress provided that that type of community confinement may also be imposed as a condition of "supervised release," see 18 U.S.C. 3583(d) (incorporating by reference discretionary conditions of probation), which like probation is a form of supervision. Unlike probation, which is an alternative to imprisonment, a period of supervised release is an additional penalty that must be served "after imprisonment." See 18 U.S.C. 3583(a).

created the Sentencing Commission to devise a system of uniform sentencing guidelines that would bring greater regularity and uniformity to sentencing by "reducing sentence disparities." *Id.* at 367; see also 18 U.S.C. 3553(a)(6).

The rule adopted by the court of appeals undermines that goal. That rule requires the Bureau to investigate and analyze the conditions of each defendant's bail bond to determine whether he suffered "jail-type" restraints on his liberty. The Bureau would be required to make that judgment on the basis of information kept by centers owned and operated by private entities, such as the Volunteers of America facility at issue in this case. The records of those private entities are not available to BOP as a matter of right, and any information those entities provide to BOP is therefore less verifiable than materials provided by the "law enforcement agenc[ies]," Pet. App. 49a, on which the Bureau ordinarily relies for documentation in dealing with credit issues. Moreover, even when there is no reason to doubt the reliability of the information furnished, that information may not significantly aid the Bureau in performing the task required by the decision below, because the "jail-type restraints" standard adopted by that court is elusive and amorphous.

The decision below also requires a federal habeas court to grant a hearing to a prisoner who receives an adverse determination from the Bureau, and who alleges that the conditions of his bail were "jail-like." Pet. App. 23a-24a. There is no reason to believe that federal habeas courts, any more than the Bureau of Prisons, will be able to perform that inquiry with ease. As the Seventh Circuit has noted, whether par-

ticular conditions of confinement are "sufficiently like prison to be treated the same * * * is not a question susceptible of rational determination, at least by tools of inquiry available to judges." *Ramsey* v. *Brennan*, 878 F.2d 995, 996 (1989). Indeed, there is no single set of objective criteria that describes all facilities where a defendant might serve a federal sentence of imprisonment. The Bureau of Prisons runs a number of correctional facilities that subject inmates to varying degrees of restraint, from maximum security penitentiaries to prison camps. The only factors that unify them are that their inmates are under the direct control of correctional personnel, are subject to summary reassignment to any other facility within the system, and are subject to the Bureau's disciplinary procedures. See *Randall* v. *Whelan*, 938 F.2d 522, 525 (4th Cir. 1991).

Moreover, the difficulty of comparing the Bureau's diverse correctional facilities with the restraints associated with community treatment centers is compounded by the fact that "[t]he programs and rules of residential treatment centers vary dramatically with each institution," and courts will therefore face "myriad combinations of restrictions." *Randall* v. *Whelan*, 938 F.2d at 525-526. Because "[n]o obvious rule informs * * * how to weigh[] a midnight curfew against one beginning at eight in the evening, or a five-day-a-week regime against one lasting seven days," *id.* at 526, the end result will be to "mire the judiciary in a swamp of factual and circumstantial details that would likely produce inconsistent and standardless decisions," *id.* at 525.

Some of those conflicts could be resolved over time through the appellate process. But a system based on case-by-case habeas adjudication of the compara-

tive restrictiveness of particular bail bonds is likely to be far more cumbersome, and produce less uniformity in the end, than a system of administrative determinations governed by uniform rules that are applied by the agency consistently throughout the country.[7] It is difficult to believe that, as part of legislation designed to bring regularity and uniformity to sentencing practices, Congress intended to create a regime that encourages unwarranted disparities in the amount of time that similarly situated prisoners actually spend in jail.

B. The History Of Section 3585 Demonstrates That Congress Intended The Credit Provisions To Benefit Only Those Defendants Held In Prison Without Bail

The history of the credit provision underscores its close ties to bail determinations. That history confirms that Congress did not anticipate that credit

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[7] The difficulty of achieving uniform results under the type of functional approach suggested by the court of appeals is highlighted by its own decision. In joining the only court to embrace a functional approach (and to reject the Bureau's view), the court of appeals emphasized that *its* functional approach does "not go as far" as the Ninth Circuit's. Pet. App. 23a. Similar circuit conflicts can be expected to arise if some form of functional approach to the credit issue becomes a national rule, because the contours of the rule will become clear only after considerable litigation. That result would be especially disruptive to prison administration, because the Bureau runs a national prison system in which inmates are routinely transferred among correctional facilities located in different circuits to maintain security and population balance. The Bureau could therefore correctly deny credit under the law governing a prisoner's first place of incarceration only to find itself defending a habeas challenge based on the different legal principles of another circuit where that prisoner may later be incarcerated.

would be awarded to a prisoner who was not actually incarcerated in a correctional facility before his sentence commenced.

1. The original credit provision was enacted in 1932 to clarify when a federal sentence began to run, in cases in which BOP had transferred the prisoner from one place of confinement to another. See 18 U.S.C. 709a (1934) (credit for time spent in jail awaiting transfer). The statute "retained th[at] limited thrust until 1960, when Congress sought to clarify whether, under statutes requiring the imposition of a minimum mandatory sentence, the court was free to give recognition to the time a defendant had spent in jail for want of bail." *Ochoa* v. *United States*, 819 F.2d 366, 371 (2d Cir. 1987); see also *United States* v. *Peterson*, 507 F.2d 1191, 1193 (D.C. Cir. 1974) (per curiam). Accordingly, in 1960 Congress required the Attorney General to grant a convicted defendant credit against his sentence "for any days spent *in custody* prior to the imposition of sentence * * * *for want of bail set* for the offense under which sentence was imposed." Act of Sept. 2, 1960, Pub. L. No. 86-691, § 1(a), 74 Stat. 738 (emphasis added).

2. Congress returned to the credit statute in the Bail Reform Act of 1966, Pub. L. No. 89-465, § 4, 80 Stat. 217 (codified at 18 U.S.C. 3568 (repealed)), when it deleted the statutory reference to "want of bail" and made credit available for offenses that did not call for a mandatory minimum sentence. The Committee Report that accompanied that legislation indicates that the express reference to bail was deleted to clarify that credit should be available for offenses made "nonbailable" by law, and also in cases when the defendant was "not released for some rea-

son other than lack of bail." S. Rep. No. 750, 89th Cong., 1st Sess. 21-22 (1965).[8] In light of that explanation, the lower courts interpreted the 1966 Act to require credit only for defendants who were imprisoned before trial, and rejected claims that onerous conditions of bail could amount to "custody" under the statute. As the D.C. Circuit explained,

> the purpose of Congress was to benefit those who were not released; there was no intention to extend credit to those who were released.

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[8] As amended in 1966, the credit statute provided:

> § 3568. **Effective date of sentence; credit for time in custody prior to the imposition of sentence**
>
> The sentence of imprisonment of any person convicted of an offense shall commence to run from the date on which such person is received at the penitentiary, reformatory, or jail for service of such sentence. The Attorney General shall give any such person credit toward service of his sentence for any days spent in custody in connection with the offense or acts for which sentence was imposed. As used in this section, the term "offense" means any criminal offense, other than an offense triable by court-martial, military commission, provost court, or other military tribunal, which is in violation of an Act of Congress and is triable in any court established by Act of Congress.
>
> If any such person shall be committed to a jail or other place of detention to await transportation to the place at which his sentence is to be served, his sentence shall commence to run from the date on which he is received at such jail or other place of detention.
>
> No sentence shall prescribe any other method of computing the term.

18 U.S.C. 3568 (1982) (repealed). Section 3568 remains in force with respect to sentences imposed before November 1, 1987.

> Had Congress, in amending the statute, intended to give credit to those who were released pending trial or appeal we think Congress would have said so in plain language; certainly there would have been some discussion of this novel proposal in the reports on the legislation.

United States v. *Peterson*, 507 F.2d at 1193. The court thus concluded that " 'in custody' * * * means detention or imprisonment in a place of confinement and does not refer to the stipulations imposed when a defendant is at large on conditional release." *Id.* at 1192. See also *Ortega* v. *United States*, 510 F.2d 412, 413 (10th Cir. 1975) (per curiam); *Polakoff* v. *United States*, 489 F.2d 727, 730 (5th Cir. 1974) (Wisdom, J.).

3. That was the state of the law when the credit statute took its current form in 1984. Indeed, until a divided panel of the Ninth Circuit reached a contrary conclusion in *Brown* v. *Rison*, 895 F.2d 533 (1990)—six years *after* enactment of the Sentencing Reform Act—"all of the circuits that ha[d] considered the matter ha[d] concluded that 'custody' for purposes of section 3568" did not "include time spent while released on bail pending trial * * * or pending appeal." *Mieles* v. *United States*, 895 F.2d 887, 888 (2d Cir. 1990); see also *Brown* v. *Rison*, 895 F.2d at 537-538 (Wallace, J., dissenting). There is no indication that Congress, in rewording the credit provision as part of the Comprehensive Crime Control Act of 1984, disagreed with the then-unanimous weight of authority that denied credit to defendants who had secured their release on bail. Cf. *Miles* v. *Apex Marine Corp.*, 498 U.S. 19, 32 (1990) ("We assume that Congress is aware of existing law when it passes legislation"). Rather, as this Court previ-

ously stated in construing Section 3585(b), "[i]t is not lightly to be assumed that Congress intended to depart from a long established policy" followed under the predecessor provision. *United States* v. *Wilson*, 112 S. Ct. 1351, 1355 (1992). While Congress in 1984 did "replace[] the term 'custody' with the term 'official detention,'" *ibid.*, the most plausible explanation for Congress's use of the "detention" formulation in Section 3585(b) was to conform the credit provision to the nomenclature used in other sentencing provisions, see, *e.g.*, 18 U.S.C. 3585(a), 3623, and in the Bail Reform Act of 1984.[9]

C. The Court Of Appeals Erred In Failing To Defer To BOP's Reasonable Interpretation Of Section 3585

While the most natural reading of the phrase "official detention" in Section 3585(b) is that it refers to the status of a person who has been denied bail, the most that can be said of the court of appeals' analysis is that the language enacted by Congress *could* bear the functional interpretation adopted by that court, "not that it cannot bear the interpretation adoped by" the Bureau. *Sullivan* v. *Everhart*, 494

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[9] As the court below recognized, Pet. App. 12a-13a, every court of appeals to consider the question has held that the phrase "official detention" in Section 3585(b) has the same meaning as the phrase "in custody" in the predecessor statute. That conclusion is consistent with Congress's use of the term "custody" in the title of Section 3585(b), and with the sparse legislative history of that Section. The Senate Report that accompanied the Comprehensive Crime Control Act described Section 3585(b) as "provid[ing] that the defendant will receive credit towards the sentence of imprisonment for any time he has spent in official custody prior to the date the sentence was imposed." S. Rep. No. 225, 98th Cong., 1st Sess. 129 (1983).

U.S. 83, 91-92 (1990). Because the Bureau's interpretation of Section 3585(b) is reasonable, the court of appeals was required to defer to it, even if the language of that statute would bear a broader reading. See *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-844 (1984).

1. Under *Chevron*, the first inquiry is whether the statute reveals an "unambiguously expressed intent of Congress" on "the precise question" addressed by the agency's interpretation. *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. at 843. If it does, that ends the inquiry. *Id.* at 842-843; *NationsBank of North Carolina, N.A.* v. *Variable Annuity Life Ins. Co.*, No. 93-1612 (Jan. 18, 1995), slip op. 5. If, however, "the agency interpretation is not in conflict with the plain language of the statute, deference is due." *National R.R. Passenger Corp.* v. *Boston & Maine Corp.*, 112 S. Ct. 1394, 1401 (1992); see also *United States* v. *City of Fulton*, 475 U.S. 657, 666 (1986) ("We must uphold [the agency's] interpretation if the statute yields up no definitive contrary legislative command and if [its] approach is a reasonable one"). Deference is especially appropriate when "a full understanding of the force of the statutory policy in the given situation * * * depend[s] upon more than ordinary knowledge respecting the matters subjected to agency regulations." *United States* v. *Shimer*, 367 U.S. 374, 382 (1961).

The court of appeals did not dispute that BOP is the agency charged with the administration of Section 3585(b). See *United States* v. *Wilson*, *supra* (BOP, as designee of the Attorney General, computes credit after defendant begins his sentence). And that court did not find that Congress focused on "the precise question" at issue here and "clearly and un-

ambiguously" intended that credit be awarded to defendants who have been ordered to comply with restrictive conditions of release. The court concluded, however, that deference is not due to the Bureau's interpretation of Section 3585(b) for two reasons. First, the court believed that the Bureau's interpretation of Section 3585(b) is inconsistent with its interpretation of the phrase "in custody" in former Section 3568. Pet. App. 9a-10a. Second, the court noted that the Bureau's interpretation of the new credit provision was not formally embodied in a regulation "subject to the rigors of the Administrative Procedure[] Act, including public notice and comment." *Id.* at 9a. Neither objection has merit.

2. The court of appeals erred in stating (Pet. App. 9a-10a) that the Bureau has taken inconsistent positions in administering the credit statutes, because the Bureau has now abandoned a "functional approach" to the custody issue that it purportedly used under the predecessor statute. The Bureau never applied the sort of unguided "functional approach" that the court believed was the hallmark of the agency's interpretation of the predecessor statute. The court's contrary conclusion was based on a misreading of a rarely used exception to the Bureau's policy under the old statute.

In Program Statements issued under the predecessor statute, the Bureau consistently denied credit to federal prisoners for time spent at a halfway house or other similar institutions as a condition of pretrial release. For example, in Program Statement No. 5880.24 (Sept. 5, 1979), which interpreted former Section 3568, the Bureau provided that "[j]ail time credit will be given for time spent in the custody of the Attorney General," that "[t]ime spent in resi-

dence in a residential community center * * * as a condition of bail or bond * * * is not creditable as jail time," and that "a 'highly restrictive' condition of bail or bond * * * is not considered as time in custody." Pet. App. 36a, 37a-38a (emphasis omitted). Those views were a consistent feature of the Bureau's administration of Section 3568.

The general rule applied by the Bureau under the predecessor statute was subject to a narrow exception. That exception permitted credit for "time spent in a jail-type facility * * * as a condition of bail or bond * * * because of the greater degree of restraint." Pet. App. 38a (emphasis omitted). The Bureau first adopted that exception in 1975, in response to *Waldorf* v. *United States*, No. C-74-339 (W.D. Tenn. Jan. 10, 1975) (unpublished), where the court ordered that credit be given to a prisoner who had been ordered to spend weekends and nights in jail as a condition of "bail." See Program Statement No. 7600.59, § 4b(5) and attachment 1, at page 3 (May 27, 1975); compare Program Statement No. 7600.51, § 4a (Oct. 30, 1969). The exception was applied in the rare cases in which a defendant was required to spend some time in the custody of correctional authorities as a condition of bail.

The Bureau understood the decision in *Waldorf* to require a limited functional inquiry in a small class of cases (*i.e.*, those in which the defendant was in the custody of correctional authorities for part of the time when he was formally on "bail"), but its accommodation of that narrow decision was not an adoption of a general functional approach to the credit issue.[10] The focus of the exception was on the type

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[10] As we noted at the petition stage (Reply Br. 3), the Bureau occasionally incorporates adverse judicial rulings into

of *facility* involved (*i.e.*, whether it was under the control of correctional authorities), rather than (as the court of appeals apparently believed) on the restrictiveness *vel non* of the defendant's bail conditions. Indeed, except when required by court order (see, *e.g.*, *Brown* v. *Rison*, *supra*), the Bureau did not apply that statement to give credit to a defendant who was released to a private community treatment facility. That point is illustrated by the numerous reported cases decided under the predecessor statute, which were litigated precisely because the Bureau granted no credit to the inmates involved.

In any event, even if the Bureau's acquiescence in the result in *Waldorf* were viewed as an expression of the *Bureau's* view of the law, the current Program Statement applicable to Section 3585(b) contains no functional exception. The Bureau was not precluded from reverting to the rule it followed before *Waldorf*, especially in light of the intervening passage of the Comprehensive Crime Control Act of 1984, which underscored that Congress did not believe that restrictive conditions of bail qualify as "imprisonment." An agency "is not estopped from changing a view [it] believes to have been grounded upon a mistaken legal interpretation." *Thomas Jefferson University* v. *Shalala*, 114 S. Ct. 2381, 2389 (1994) (quoting *Good Samaritan Hosp.* v. *Shalala*, 113 S. Ct. 2151, 2161 (1993)). And, as this Court recently emphasized, "any change in the [agency's] position might reduce, but would not eliminate the deference we owe

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its policy statements, especially when it is not feasible to obtain further review of those rulings in a prompt fashion. That does not indicate agreement with the merits of the rulings.

[its] reasoned determinations." *NationsBank of North Carolina, N.A.* v. *Variable Annuity Life Ins. Co.*, *supra*, slip op. 12.

3. The court of appeals was also wrong to deprecate the agency's interpretation of Section 3585(b) on the ground that it was not the subject of notice-and-comment rulemaking. An agency's informal interpretations of a statute it administers are "not entitled to the same deference as norms that derive from the exercise of * * * delegated lawmaking powers," but those informal interpretations are "still entitled to some weight on judicial review." *Martin* v. *OSHRC*, 499 U.S. 144, 157 (1991). Here, BOP has embodied its view in a Program Statement that governs the day-to-day decisions of prison administrators nationwide. Pet. App. 45a-50a; see also *id.* at 33a-44a; Federal Bureau of Prisons, *Sentence Computation Manual CCCA* (1992 & Supp. 1994).[11] Those guidelines provide uniform national rules for a range of issues that BOP has confronted repeatedly in the course of its nearly 30-year experience administering the custody credit provisions, such as whether credit should be granted for time spent in community confinement, on a writ of habeas corpus from non-federal custody, or in detention pending federal prosecution while simultaneously serving another sentence. The Bureau's judgment reflects the type of expertise in explicating ambiguous statutory lan-

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[11] We have lodged with the Clerk of the Court three copies of the Bureau's *Sentence Computation Manual*, the Program Statements cited in this brief (that are not printed in the appendix to the petition), and the unpublished decision in *Waldorf*. We have also provided counsel for respondent with copies of those materials.

guage that warrants judicial deference. See *Pauley* v. *BethEnergy Mines, Inc.*, 501 U.S. 680, 696-697 (1991).

Moreover, even if the Bureau were required to administer the credit statute based on a functional concept of "official detention," the Bureau's reliance on the categories prescribed by the Bail Reform Act of 1984 would be permissible. The court did not dispute the reasonableness of BOP's view that "conditions at community treatment centers *generally* are neither penal in nature nor nearly as restrictive as those in a full custodial environment." Pet. App. 19a (emphasis in original). The court believed, however, that the Bureau was required to focus on the specific restrictions imposed on *respondent* at the Volunteers of America facility. *Id.* at 19a-20a. That reasoning misconceives the nature of administrative decision-making. So long as its "approach is a reasonable one," *United States* v. *City of Fulton*, 475 U.S. at 666, the Bureau is entitled to adopt a general rule to cover credit for community confinement on the basis of empirical assumptions that are *generally* true, even if those assumptions do not hold true in *every* case. See *American Hosp. Ass'n* v. *NLRB*, 499 U.S. 606, 612, 619 (1991). It is sufficient that the legitimate concerns that the rule seeks to promote are generally implicated by cases falling within the class covered by the Bureau's rule. Indeed, one reason often advanced for formulating a general rule is to avoid the need to establish a special justification for a particular action in every case. See, *e.g.*, *Arizona* v. *Roberson*, 486 U.S. 675, 681-682 (1988); *Arizona* v. *Maricopa County Medical Soc'y*, 457 U.S. 332, 351 (1982); *Weinberger* v. *Salfi*, 422 U.S. 749, 777 (1975).

The court of appeals' analysis also ignores the fact that any imprecision in the Bureau's general rule is significantly outweighed by the ease and certainty of its operation, which promotes the even-handed application of the credit provision. Under its interpretation of Section 3585(b), the Bureau can make credit determinations on the basis of the documentary evidence that ordinarily accompanies the inmate after he is sentenced—the inmate's judgment of conviction and bail form. Those documents will ordinarily disclose whether the defendant was released on bail during the pendency of the proceedings, and on what conditions. Typically, however, those documents will not contain any description of precisely how "jail-like" those conditions were. Unlike the rule adopted by the court of appeals, which requires time-consuming litigation on the basis of an amorphous standard (see pp. 15-17, *supra*), the rule adopted by the Bureau permits the Bureau to make credit determinations quickly and efficiently on the basis of information obtainable from reliable law enforcement sources. That approach to the administration of the credit statute is a reasonable one, and the court of appeals erred in rejecting it.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

DREW S. DAYS, III
Solicitor General

JO ANN HARRIS
Assistant Attorney General

MICHAEL R. DREEBEN
Deputy Solicitor General

MIGUEL A. ESTRADA
Assistant to the Solicitor General

JOSEPH DOUGLAS WILSON
Attorney

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